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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 548 (JMF)

5 JOSHUA ADAM SCHULTE,

6 Defendant.

Trial

7 -----x

8 New York, N.Y.
9 February 1, 2024
2:20 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
Southern District of New York

16 BY: DAVID W. DENTON, JR.

MICHAEL D. LOCKARD

17 Assistant United States Attorneys

18 CESAR DE CASTRO

SHANNON McMANNUS

19 Attorneys for Defendant

20
21 (Case called)

22 THE DEPUTY CLERK: Counsel, state your name for the
23 record.

24 MR. DENTON: Good afternoon, your Honor. David
25 Denton, Michael Lockard and Nicholas Bradley for the

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1 government.

2 THE COURT: Good afternoon.

3 MR. DE CASTRO: Good afternoon. Cesar de Castro and
4 Shannon McManus for Mr. Schulte, who is seated between us.

5 THE COURT: Good afternoon to you, as well.

6 We are here for purposes of sentencing. It's been a
7 long road but we are final there I there. In preparation for
8 today's proceeding I have reviewed the presentence report
9 prepared dated December 4 of last year. I have also received
10 and reviewed the following additional submissions: The defense
11 submission dated January 19 of this year, as well as the
12 attachments to that submission which include a letter
13 summarizing objections to the presentence report, letters
14 addressed to me from Mr. Schulte's parents, brothers, cousins,
15 aunts, uncles, a nephew, and some friends, as well as a
16 mitigation report which the defense has asked to file under
17 seal.

18 I have also received and reviewed the government's
19 submission dated January 25 of this year, as well as the
20 attachments to that submission which include a letter from the
21 CIA deputy director, a classified letter from the director of
22 the CIA Center for Cyber Intelligence, and letters from
23 identified victims of the defendant's child pornography
24 offenses which the government also asked to be filed under
25 seal. I have also received a proposed forfeiture order.

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1 First, are there any additional submissions I should
2 have received?

3 MR. DENTON: No, your Honor.

4 MR. DE CASTRO: No, your Honor.

5 THE COURT: Have you each received the other's
6 submission, to the extent that they are not filed publicly on
7 the docket?

8 MR. DENTON: Yes, your Honor.

9 MR. DE CASTRO: We have, yes.

10 THE COURT: All right.

11 With respect to the sealing request, I guess I would
12 ask the government, is there any reason that the victim letters
13 can't be filed publicly with, I think for the most part, any
14 identifying information that has already been redacted to the
15 extent that you wanted to redact additional things, for example
16 the series names or what have you. I would be open to that,
17 but it strikes me that the substance of them is of public
18 interest and if they don't identify who the victims are that
19 there is some argument that they should be public.

20 MR. DENTON: Your Honor, to the extent you would like
21 to ask us to address that, I think we would ask to put
22 something in. There are some specific sealing provisions in
23 2259 that deal with victim submissions and one of them turns on
24 whether the victim is still a minor, and so I would ask for us
25 to have the opportunity to just confirm whether different

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1 categories would apply to different parts of those letters.

2 THE COURT: Fair enough. So why don't you do that.
3 Can you do that by the end of next week?

4 MR. DENTON: Yes, your Honor.

5 THE COURT: Great. So I will defer judgment on that.
6 I will grant the defense request to file the mitigation report
7 under seal and the classified filing is obviously going to
8 remain classified and therefore sealed. Those items will be
9 made part of the record, are part of the record. To the extent
10 that there is an appeal, counsel on appeal can have access to
11 them without further application to me.

12 Mr. Denton, can you confirm that the government has
13 notified any known and identifiable victims of any rights that
14 they have with respect to today's proceedings?

15 MR. DENTON: We have, your Honor.

16 THE COURT: Turning then to the presentence report,
17 Mr. De Castro, I take it you have reviewed the presentence
18 report?

19 MR. DE CASTRO: Yes, your Honor.

20 THE COURT: And have you reviewed it with Mr. Schulte?

21 MR. DE CASTRO: We have. It was a little difficult
22 but we have.

23 THE COURT: I know from your submission that you have
24 various objections. I will address those in short order. I
25 guess aside from those that are set forth in your submission,

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1 any additional objections or corrections?

2 MR. DE CASTRO: No, Judge.

3 THE COURT: We do have an overflow courtroom, by the
4 say, so even more so than usual I would ask that you make sure
5 you speak into the microphones.

6 Mr. Schulte, if you want to pull that microphone close
7 to you, you may. Did you review the presentence report?

8 THE DEFENDANT: Yes. It was provided to me last week
9 but I was able is to review it with counsel on Monday.

10 THE COURT: Very good.

11 Mr. Denton, have you reviewed the presentence report?

12 MR. DENTON: Yes, your Honor.

13 THE COURT: Putting aside the guidelines for a moment,
14 any objections or corrections to the factual recitation in the
15 report?

16 MR. DENTON: No, your Honor.

17 THE COURT: Let me address the defense objections with
18 respect to the factual recitations. I don't know if the
19 objections set forth in Footnote 1 of the defense submission
20 are still being made but to the extent they are I overrule
21 them, first with respect to paragraph 39, which references the
22 circumstances that led to Mr. Schulte's remand when he was on
23 bail. I think the issue is not material to my sentence and I
24 think the existing language is sufficient. It states that the
25 alleged violation was accessing the internet through his

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1 roommate and cousin. Later references the use in context makes
2 clear that it was through the cousin so I don't think there is
3 any material problem with that.

4 The objection to paragraph 80 is overruled. The
5 record at trial supports the statement in that paragraph that
6 classified documents were found in Mr. Schulte's home and
7 therefore that paragraph will remain as is. And I agree with
8 the government that the paragraphs concerning Mr. Schulte's use
9 of the discovery laptop and the materials that were found on it
10 as highly material and relevant to sentencing and therefore
11 ought to remain part of the presentence report, and the record
12 was litigated at some length during the proceeding and even if
13 he was not convicted of offenses relating to that conduct, I
14 think it is relevant to sentencing. And, it is not accurate to
15 state that the defense was denied access to the laptop and the
16 forensic analysis, as the record makes clear that that is not
17 the case.

18 Hearing no other objections, I will adopt the factual
19 recitations set forth in the presentence report which will also
20 be made part of the record and kept under seal. If an appeal
21 is taken, counsel on appeal may have access to the presentence
22 report as well without further application to me.

23 Turning then to the guidelines. As counsel know, I am
24 not bound by the guidelines but I do have to accurately
25 calculate the guidelines range and then consider that range in

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1 imposing a sentence. In this case the presentence report
2 calculates the offense level as 43, the Criminal History
3 Category is a VI by virtue of the terrorism enhancement, and
4 the corresponding guideline sentence is life in prison; a
5 supervised release range of one to three years on Counts One
6 through Five, Seven and of the S3 indictment and Count Nine of
7 the S2 indictment, one year on Count Six of the S3 indictment,
8 and two to five years on Count Eleven of the S2 indictment, and
9 five years to life on Counts Twelve through Fourteen of the S2
10 indictment and a fine range of \$50,000 to \$250,000.

11 The defendant has objected to several aspects of the
12 guidelines calculation. When we address the objections in
13 turn, which are well briefed by both sides, I don't need to
14 hear further argument on it.

15 First, and probably most substantial, is the
16 disagreement in the application of the terrorism enhancement
17 which is set forth in Section 3A1.4 of the guidelines. The
18 enhancement, by its terms, plainly applies, per application
19 note 1, the definition of federal crime of terrorism is found
20 in 18 U.S. Code Section 2332(b)(G)(5). That provision, in
21 turn, has two prongs, first the offense must be one that is
22 calculated to influence or affect the conduct of government by
23 intimidation or coercion, or to retaliate against government
24 conduct; and second, must be a violation of an enumerated
25 statute, a list that includes 18 U.S.C. Section 1030(a)(1) and

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1 (5), offenses of which Mr. Schulte was convicted of here.
2 Accordingly, the application of the enhancement turns on
3 whether the offense was, quote unquote, calculated to retaliate
4 against government conduct. I don't think -- and I don't think
5 the government argues -- that the offense was calculated to
6 influence or affect conduct of government by intimidation or
7 coercion. I find that it was calculated to retaliate against
8 government conduct. Specifically, trial records support the
9 finding of Mr. Schulte's conduct was calculated to retaliate
10 for various actions taken by the government, namely, the CIA,
11 from his transfer within the CIA, to revocation of his
12 administrator privileges and access to certain computer
13 resources and materials to the reprimands that he received.
14 The fact that this government conduct occurred in the context
15 of the employer/employee relationship does not change the fact
16 that as a matter of plain language, it was government conduct.
17 Moreover, as the government here points out, Mr. Schulte's
18 conduct, stealing the CIA's entire arsenal of cyber tools,
19 explain that he sought to retaliate against government as a
20 whole. The fact that Mr. Schulte's case is different from
21 Timothy McVeigh's or Osama Bin Laden's doesn't make the plain
22 language of the definition any less applicable. See, for
23 example, United States v. Steward, 590 F.3d 93 at page 150, (2d
24 Cir. 2009), finding that the terrorism enhancement, quote,
25 plainly applied as a matter of law irrespective of whether the

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1 defendant's behavior in that case was, quote unquote, atypical.
2 In short, the terrorism enhancement by its plain terms applies.

3 The defendant's other arguments with respect to the
4 enhancement are really Section 355 3(a) arguments about whether
5 I should vary from the guidelines because the enhancement is
6 unduly harsh. I will defer discussion of that issue until
7 later in the proceeding when we discuss the 3553(a) factors.

8 Second, the enhancement to which the defense objects
9 is the obstruction of justice enhancement in 3C1.1. The
10 defendant's argument on that score is squarely foreclosed by
11 *United States v. Crisci*, 273 F.3d 235 (2d Cir. 2001) which held
12 that where, as here, there is a separate count of conviction
13 for obstructive conduct, there, as here, a violation of 18
14 U.S.C. Code Section 1001, the Court is required to apply
15 Section 3C1.1. That is at page 240 of the opinion. I would
16 note that even if that were not the case, I would apply the
17 enhancement notwithstanding my Rule 29 decision with respect to
18 the obstruction count. The basis for that decision was that
19 there was an insufficient nexus to the grand jury proceeding,
20 not that the defendant didn't engage in obstructive conduct, he
21 plainly did, not only by lying to the FBI in his initial
22 interview but by doubling and even tripling down in those lies
23 in his subsequent counsel interviews with the U.S. Attorney's
24 office. The bottom line is that the defendant's objection to
25 that enhancement is overruled as well.

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1 The third enhancement to which the defense objects is
2 the enhancement for gathering top secret information
3 Section 2M3.2(a)(1) and 2M3.3(a)(1). That objection is
4 overruled substantially for the reasons set forth in the
5 government's sentencing submission. There is ample evidence in
6 the record from trial and from the extensive CIPA litigation
7 before trial to support the enhancement. Contrary to the
8 defendant's suggestion, the government is not required to prove
9 that the information and materials were properly classified as
10 Top Secret, but even if the government was required to prove
11 that it did so here given the extensive evidence in the record
12 from trial, to the deputy director's sentencing submission, to
13 the classified sentencing submission, to support the conclusion
14 that the materials at issue were properly classified as Top
15 Secret given the harm that they could and did cause to national
16 security.

17 Finally, the defense objects to an enhancement for an
18 abuse of position of trust or use of special skill in violation
19 of Section 3B1.3. That is also overruled, substantially for
20 the reason set forth in the government's submission. Indeed, I
21 think the argument to the contrary on this one is, or at least
22 borders on frivolous, honestly. Mr. Schulte plainly used his
23 sophisticated knowledge of and skills with computers and the
24 CIA's computer systems to commit the espionage offenses and his
25 knowledge and skills are not possessed by members of the

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1 general public. See, for example, *United States v. Chinniah*,
2 173 F.3d 846 (2d Cir. 1999) which is an unpublished decision
3 but directly on point.

4 In addition, Mr. Schulte clearly abused a position of
5 trust. Indeed, his position in the CIA itself was a position
6 of trust as he himself acknowledged in the secrecy agreement
7 that he signed which is Government Exhibit 405 of the 2022
8 trial, and his position of trust as an administrator of the
9 Atlassian Suite plainly enabled him to commit the offense even
10 though it had been revoked at the time that he ultimately
11 engaged in the theft and leak of materials at issue because his
12 administrator status was what enabled him, through the
13 reversion to an earlier snapshot of the Confluence server as
14 proved at trial, to obtain unauthorized access. So, the
15 enhancement in Section 3B1.3 applies for multiple reasons.

16 So those are the objections that were set forth in the
17 defense submission. Are there any additional objections with
18 respect to the Sentencing Guidelines calculation set forth in
19 the presentence report?

20 MR. DE CASTRO: No, your Honor.

21 THE COURT: Government?

22 MR. DENTON: No, your Honor.

23 THE COURT: So, in light of those rulings and my own
24 independent calculation of the guidelines, I accept and adopt
25 the guidelines calculation set forth in the presentence report,

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1 that is, using the November 2023 edition of the guidelines. I
2 find that the offense level is 43, Criminal History Category is
3 VI, and the guidelines sentence is life in prison.

4 Does either counsel believe that a departure that is
5 within the guideline system and as distinct from what has come
6 to be known as a variance is warranted here?

7 Mr. Denton?

8 MR. DENTON: No, your Honor.

9 MR. DE CASTRO: Departure, no; and as the Court knows,
10 I will be arguing for a substantial variance.

11 THE COURT: Understood. I will defer on that but have
12 nevertheless considered whether there is any basis for
13 departure which is within the guideline system and as distinct
14 from what has come to be known a variance and I find that there
15 are no grounds that would justify a departure.

16 With that, I will hear first from the government, and
17 then from Mr. De Castro, and then if he wishes to say anything
18 from Mr. Schulte. Suffice it to say, I am very familiar with
19 the record in this case. I have read your very lengthy and
20 substantive sentencing submissions, they were both very well
21 and you don't need to repeat things that I would already know
22 from either my familiarity with the record or those
23 submissions, but to the extent that there is anything that you
24 think would be helpful in forming my decision as to the
25 appropriate sentence you may share it and I may have some

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1 questions for each counsel as well. So, starting with the
2 government?

3 MR. DENTON: Thank you, your Honor.

4 I want to make one global observation to start. The
5 court is in a particularly unique position here of not just
6 having familiarity with the record but of having familiarity
7 with this defendant. In terms of the volume of proceedings,
8 the length of some of those, and his self-representation
9 through a lot of it, the Court has perhaps some unique insight
10 into Joshua Schulte's character and behavior and persistence,
11 which I think is one of the most telling things about the
12 sentence that the Court should impose here.

13 As the Court has heard from many of the people who
14 worked with him at the CIA, the message time and time again
15 was: We told you to stop and you just wouldn't do it. And
16 that was borne out in a lot of his behavior before the Court as
17 well, such as when he was told not to violate protective
18 orders. He was told to stop and he just kept doing it anyway.
19 And so, I think there is a particular insight that the Court
20 knows here of this defendant that may be, in some respects
21 unique, that informs the sentence that the Court should impose
22 today.

23 It is no small thing for the government to ask the
24 Court to sentence someone to life in prison. That's not
25 something that anyone asks for lightly but it is a reflection

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1 of the unique gravity of this defendant's crimes, not just one
2 crime, not a single murder, but three discrete courses of
3 conduct, each with their own levels of harm.

4 First, the original act of espionage that he committed
5 at the CIA ranks in the most damaging disclosures of classified
6 information in American history. And as we noted, one of the
7 things that makes this case somewhat unique relative to others
8 is that by choosing to transmit all of this information to an
9 entity that disseminated it publicly rather than to a single
10 foreign power, that decision by the defendant had cascading
11 effects that harmed U.S. national security not just vis-à-vis a
12 particular adversary but with respect to every adversary and in
13 an arena of cyber intelligence that is ever more critical. So,
14 there is this cascading effect of the defendant's choices, and
15 at each stage his choices caused more harm than they might have
16 otherwise.

17 The second course of conduct was the combined effect
18 of what he did while incarcerated. And there has been so much
19 litigation and discussions in this case about the condition of
20 the defendant's confinement it bears calling that those
21 conditions were not a reflexive and initial position. They
22 were a response to the defendant's treating, every single time
23 that limits were imposed on him, those limits as a challenge
24 for him to overcome and ignore and violate. And so, that's
25 what led to the information or the dissemination of more

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1 classified information from jail, the attempted dissemination
2 of more, and I think it's important that the Court heard at
3 trial why those particular bits of information were important.
4 This is not some sort of stray reference but this is the sort
5 of thing that has meaningful consequences for operations, for
6 employees, for officers, and thus for national security.

7 And then, underlying all of that are the child
8 pornography offenses, which as we note in our letter, the
9 details stand for themselves and the Court, like everyone, had
10 to see some of that. It speaks to a particular pathology of
11 the defendant and the fact that he not only possessed and
12 viewed that material and collected it and transported it over
13 years while he was at liberty, that was what he chose to do
14 with privileges that he was granted while incarcerated, in fact
15 even while on trial for espionage, was choosing to view child
16 pornography, from in jail.

17 So, each of these courses of conduct, these sort of
18 three discrete groups that we have talked about all throughout
19 this case are crimes that demand just punishment and should
20 reflect the severity of those offenses, but the manner of their
21 commission, the fact of their commission, the timing of their
22 commission also speaks to the need for deterrence and
23 incapacitation of Joshua Schulte in particular. And so, that
24 is why we have asked for the sentence that we have. As I say,
25 it is no small thing but the harm that he caused was not small.

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1 I am happy to answer any questions that the Court has.

2 THE COURT: OK. Thank you. I do have a couple.

3 First I want to disentangle the different purposes of
4 punishment just a little bit. Put aside seriousness of the
5 offense, essentially retribution and deterrence for a moment
6 and just focus on incapacitation. I think I am inclined to
7 agree that Mr. Schulte has extraordinary computer skills and
8 has a demonstrated willingness to damage national security of
9 the United States by leaking classified information to which he
10 is privy to as he demonstrated not only in the initial leaks
11 but by leaking from the MCC and even in some of his statements
12 after his conviction. I guess the question I have is at what
13 point do those risks or threats, just focusing on national
14 security, not the child pornography, I suppose, sort of
15 dissipate? That is to say, to the extent that he is privy to
16 classified information today, the disclosure of which can harm
17 national security, presumably at some point that information is
18 no longer ripe and therefore damaging to national security.
19 So, too, if he is in prison for a while, at some point one
20 imagines that his computer skills will atrophy since he is not
21 going to be brushing up on them when he is in prison and
22 presumably his ability to do the kinds of things that he did
23 here may not be as readily available to him.

24 So, I guess if you catch the drift, I guess why is a
25 life sentence necessary at least just for purposes of

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1 incapacitation? Isn't there a point at which some number of
2 years from now those risks are sufficiently small that he
3 doesn't need to be jailed?

4 MR. DENTON: So I think the answer is on both it is
5 highly variable. I think separate from the term of
6 imprisonment that the Court imposes that is why, or one of the
7 reasons at least why special administrative measures have to be
8 rejustified and reauthorized annually, because that is true. I
9 think there is some information that the defendant is privy to
10 that is so sensitive that it is unlikely to dissipate during
11 the course of his lifetime. An easy example that we can talk
12 about that has been a persistent issue in this case are the
13 identities of covert officers, people who have served in
14 covered capacities for the CIA that he knows that we have
15 repeatedly had issues with his either disagreeing with the
16 classification of or otherwise publishing that information in
17 filings. Purposefully or inadvertently it has happened. That
18 is information that, essentially, for the duration of those
19 officers' lives, will remain sensitive. And that's before we
20 talk about particular operations or particular things where the
21 ramifications of it are not just the ongoing existence of the
22 operation but potentially even years later the fact that it was
23 conducted by the United States where it was could have serious
24 implications for foreign policy.

25 So, I cannot predict, your Honor, the point at which

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1 that will dissipate. I think it is fair to say that it will
2 exist on a slope and the degree to which it will be dangerous
3 will change over time. As I said, that's why SAMs are
4 appropriately re-evaluated on a fairly frequent basis but it is
5 also true that a significant amount of it will remain sensitive
6 and will require his incapacitation for a very long time.

7 THE COURT: Second, could you address the 3553(a)
8 arguments with respect to the terrorism enhancement? I already
9 ruled I certainly think as a matter of plain language it
10 applies but I do think it has been criticized by some
11 commentators -- [phone ringing] -- nobody's phone should be
12 going off -- it has been criticized by some commentators and
13 courts, one I believe described it as taking a wrecking ball to
14 the guidelines. I do see some merit to that argument here and
15 let me explain in particular why.

16 The two predicate convictions that support it are the
17 violations of Section 1030. If I am not mistaken, I think the
18 maximum sentence for one of those is 10 years and the other is
19 a year, which is to say that even taken on a consecutive basis,
20 the maximum sentence they would support as a matter of
21 Congress' intent is 11 years. So the fact that those then sort
22 of trigger an enhancement under the guidelines that, because it
23 also bumps up the Criminal History Category to VI, result in a
24 life sentence under the guidelines seems a little bit of a
25 disconnect. So, can you address that?

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1 MR. DENTON: Sure, your Honor.

2 So, let me start by just addressing substantively I
3 think the reason why the criticisms of the terrorism guideline
4 may be applicable in other contexts but not necessarily in this
5 one.

6 I think as Judge Walker's opinion, concurring in part
7 with Stewart, lays out there is two different objectives that
8 the guideline is intended to serve reflected in the two ways in
9 which it enhances the guideline recommendation. The first is
10 the additional points on the offense level is designed simply
11 to reflect the seriousness of terrorism crimes. The terrorism
12 guideline is a Congressional directive, it is not something the
13 commission has done, Congress has made the decision that no
14 matter what the commission decides with respect to specific
15 offense levels for terrorism in general, for this enumerated
16 set of offenses the sentencing guidelines should reflect the
17 unique harms of national security offenses. One thing I think
18 that is important there is when you look at the two 1030(a)
19 predicates to which the terrorism enhancement applies, the two
20 that they apply to are (a)(1), which deals with effectively the
21 best way to describe it is espionage by computer; and (a)(5),
22 which is the transmission of harmful commands so it is the
23 actual act of causing damage. He was also convicted under
24 (a)(2) which simply involves accessing computer systems of a
25 government agency. Congress did not include that in the

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1 enhancement because it was expressly designed to acknowledge
2 that there are certain types of crimes that have national
3 security implications for which Congress has directed that the
4 commission employ this enhancement. I think whatever name gets
5 put on the offense, it is clear that the defendant's conduct
6 here falls within that realm of exceptionally grave harm to
7 national security of a different type than an Oklahoma City
8 bombing or Osama Bin Laden, but in some respects within its own
9 sphere, within the sort of information area equally at the far
10 end of the spectrum of how bad it can be.

11 The second is the Criminal History Category
12 enhancement which, again, there too, it reflects this
13 determination that national security offenders are uniquely
14 likely to recidivate and more even than that, uniquely
15 challenging to rehabilitate in a way that the Court can be
16 confident about that is different from other types of offenses.
17 There are some criticisms of how that determination was made
18 but for all of the reasons that I discussed before I think
19 especially apply to this defendant and that is a concern that,
20 as applied to him in particular, rings quite loud.

21 Overall, I think your Honor is correct to note that
22 there is perhaps a mismatch in some respects between the
23 gravity of some of the crimes that are described and what
24 penalties were ascribed to certain offenses and not to others.
25 I think the Court has discretion to decide how to sentence

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1 across the different counts here and I think with respect to
2 considering the 3553(a) factors, I don't think that those
3 statutory terms necessarily reflect any minimization of the
4 seriousness of the offense.

5 THE COURT: And I did get your proposed forfeiture
6 order so you don't need to address that but can you comment
7 with respect to restitution?

8 MR. DENTON: Yes, your Honor.

9 We would ask the Court to allow us to submit
10 something, a proposed restitution, within 90 days. The
11 mandatory restitution under, I believe it was also
12 Section 2259, requires a calculation about the victims' actual
13 losses of child pornography offenses and also how much they
14 have been repaid by other cases in which restitution has been
15 ordered. We have been in touch through our Victim Services
16 Unit with the people who compile that information and asked for
17 it. They weren't able to get it to us in time for this
18 proceeding but we expect we will, given the complexity of those
19 calculations, we would ask for the extra time to be precise
20 about those numbers.

21 THE COURT: And you agree that there should not be an
22 assessment under the Justice for Victims of Trafficking Act,
23 the JVTA?

24 MR. DENTON: No, your Honor.

25 THE COURT: No?

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1 MR. DENTON: I'm sorry. We agree that there should
2 not be, your Honor.

3 THE COURT: All right, Mr. De Castro.

4 MR. DE CASTRO: Judge, can I use the lectern?

5 THE COURT: As long as you speak into the microphone,
6 that's fine with me.

7 MR. DE CASTRO: I will.

8 So thank you, your Honor. Joshua Schulte stands
9 convicted of crimes for which this Court has to determine,
10 among others, what is sufficient but not greater than necessary
11 to rehabilitate him, deter him, deters others, and that is
12 just. That is, what is the least amount of time necessary to
13 achieve those goals. If the standard were the most necessary
14 then life imprisonment would serve those goals for Mr. Schulte,
15 it would serve those goals for any other defendant before the
16 Court and for any crime, but that thankfully for the system and
17 thankfully for us that is not the law. For Mr. Schulte and all
18 defendants the Court must consider the least necessary
19 punishment that would achieve those goals.

20 The Court has the unenviable task of imposing
21 punishment, just punishment on a fellow citizen convicted of
22 crimes. No doubt that it is one of the most difficult tasks
23 that this Court engages in. The Court has to weigh so many
24 factors to reach a just result. The parties can advocate. You
25 have to achieve a just result and I know that must be

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1 difficult.

2 Our guideline system treats individuals like a
3 mathematical formula. While still considered, it has been
4 correctly rejected as the way in which you determine the
5 appropriate sentence for another human being. And this is a
6 difficult case. Joshua Schulte has certainly been convicted of
7 serious crimes. If that was the only factor, that the Court
8 accepted all the government's arguments regarding the
9 seriousness and effect of the crimes, then it is not a
10 difficult sentence. Then I suppose you go with what the
11 government says. But there are other questions and factors to
12 weigh.

13 Is Joshua Schulte capable of redemption? We say yes.
14 His support network, some of which is here today, many who
15 couldn't travel here, his parents are here, siblings are here,
16 they have been there and will be there when he is released from
17 prison. That tells us, yes, he is capable of redemption. They
18 will be there to get him on track. Is he capable of
19 rehabilitation? Capable of being deterred? We also of course
20 say yes. The conditions of confinement have so stripped him
21 down and any further imprisonment, which may include SAMs and
22 it sounds like is likely to include SAMs, will finish the job
23 that neither he nor anyone else subjected to his conditions
24 would likely engage in any future conduct or criminal conduct.

25 Despite the crimes for which he has been convicted and

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1 facing a potential life sentence, he still has hopes and
2 dreams. His hopes and dreams have changed obviously
3 drastically since his arrest and now he longs for the simple
4 things in life: A face-to-face meeting with a loved one where
5 they can touch each other's hand or maybe even have a short
6 embrace, he doesn't have that; a private conversation, one
7 that's not recorded and/or videotaped with anyone other than a
8 prison guard or his lawyers; the feeling of the sun on his
9 face, not in the confines of a prison transport van or in this
10 courtroom; or the residual light from the windows strategically
11 place in the former warehouse that now serves as the MDC.

12 The government and some would argue that by virtue of
13 the crimes of which he has been convicted he has forfeited
14 those rights, those simple pleasures -- those simple pleasures
15 of our everyday existence. And that's why we impose the SAMs
16 upon him. But has he really forfeited them forever? Is life
17 in prison or the equivalent of life in prison a sentence that
18 is sufficient but not greater than necessary? Of course we say
19 the answer is no.

20 The factors that we spent most of the time on in our
21 sentencing submission were the conditions of confinement. I'm
22 not going to repeat, I don't try to do that, but I think it is
23 important to highlight some of that and give a little
24 additional color, if we can and since that's, we believe, is
25 the single most important factor that this Court should

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1 consider.

2 And I want to be clear to make a distinction between
3 the SAMs and his conditions of confinement. We are not
4 re-litigating the SAMs issue. It was before Judge Crotty, it
5 was before you, it has been before you a number of motions,
6 before my involvement in this case. We are not re-litigating
7 that. The restrictions and limitations regarding his
8 communications and access to materials have been severely
9 restricted, have been litigated, and have been decided. And
10 the government's point is that the SAMs were imposed on him as
11 a result of his actions. However, his torturous conditions
12 have gone well beyond any reasonably tailored restrictions to
13 address the potential safety and security concerns. The
14 conditions under which he has suffered the last five and a half
15 years are not part of the SAMs and they need to be addressed
16 and they're simply not. And the message to the MDC, over and
17 over again by Courts in this district and most recently by this
18 Court, is that you have to consider the humanity of the people
19 that are in your facility and what has happened over and over
20 and over and over again is your orders are ignored. They are
21 put on the bottom of the pile and ignored, just like our
22 communications with them, our petitions to them, for anything
23 as counsel to our clients are ignored.

24 The conditions under which he has served the last five
25 and a half years are not required or even contemplated in SAMs

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1 because they're inhuman and they're characterized as torture in
2 almost every civilized nation. Complete isolation, 23-hour
3 lockdown in a windowless cell 23 hours a day. Not part of the
4 SAMs and that's what he has had for five and a half years. No
5 ability to turn off the lights on off the lights. His lights
6 are on all the time. He doesn't know if it's daytime or
7 nighttime. It's not part of the SAMs. Little to no access to
8 natural light. That's not part of the SAMs either. Little to
9 no access to fresh air. Not part of the SAMs but imposed on
10 him. Non-stop white noise. Not part of the SAMs because it is
11 not tailored to any need of the Bureau of Prisons except to
12 torture him. Freezing cold temperatures year round in his cell
13 with every piece of clothing he has layered upon layer to stay
14 warm. Not in SAMs. Every client I have at the MDC describes
15 that. It is freezing cold there. Frequent missed meals many
16 days a week. It is not in SAMs but he is subjected to that.
17 And he has severely restricted commissary. The one thing that
18 prisoners look forward to, of course is communications with
19 their family and friends and being able to get things from
20 commissary, buy things, buy food, buy radios, things like that.

21 We were recently at the MDC to visit Mr. Schulte. As
22 he mentioned, he got his PSR on Monday after we had mailed it
23 maybe four times. We had been with him, we had to put it up on
24 a glass to show him so he could potentially read it. And when
25 we were there it was confirmed by a lieutenant there that we

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1 were able to speak to that they had just been skipping his
2 commissary. So, *oh, there is not a lot of people in that unit*
3 *they don't feel like looking up what anybody is ordering so*
4 *they just skip it.* That's not part of the SAMs either.

5 No access to any form of entertainment is not part of
6 the SAMs. And that his lawyers have to mail him things
7 multiple times, over and over and over again, wasting taxpayer
8 dollars upon taxpayer dollars, to try to get him simple
9 materials is not part of the SAMs either. Our material is
10 supposed to be reviewed and provided to him. He received our
11 mail the other day months -- that we had mailed months earlier
12 in a big bulk. Here you go, you are about to be sentenced.
13 And that his personal mail is subject to the same, that they're
14 just going to give him his mail quarterly, that's not part of
15 the SAMs either because that's cruel. Because that's what it
16 is, cruel, because he can't engage. Even if the communications
17 are going to be monitored for security concerns he can't even
18 have a -- people like to call it these days, snail mail
19 conversations with someone. Here, here is what is going on in
20 my life, what is going on in your life? Maybe I can live
21 vicariously through you a little bit. He can't have any of
22 that.

23 The government, in its submission, defends the SAMs
24 but as it has been forced to do in countless sentencings of
25 inmates housed at the MDC. As this Court noted in its previous

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1 decision, prosecutors no longer even put up a fight or dispute
2 the state of affairs at the MDC, that they're unacceptable and
3 none of those conditions that I just described are part of the
4 SAMs. And I submit I don't think the government would get up
5 and say, yeah, we really think there is a need to put white
6 noise outside this man's cell all the time, keep his lights on
7 all the time, sleep deprive him. Those are the things we talk
8 about when we talk about torture.

9 So the implementation of the SAMs and all of these
10 other torturous conditions that are obviously left out of the
11 actual SAMs directive warrant Court's consideration and, I
12 submit, unprecedented variance. The way we treat our prisoners
13 and detainees, those from which we have taken their basic
14 freedoms after due process, speaks volumes about our country.
15 And there cannot be any other appropriate redress than for this
16 Court to substantially vary downward. And there is no reason
17 to believe that the Bureau of Prisons or the Department of
18 Justice will take its foot off the pedal, and you know that
19 from today. For the very reasons they argue that Mr. Schulte
20 should receive a life sentence they will argue that a lifetime
21 of SAMs measures should be imposed on him as well. And like
22 his current conditions, which come with these unwritten
23 conditions that I just went through, inhumane and torturous as
24 they are, they come with that as well.

25 I expect Mr. Schulte will speak more to you about the

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1 conditions and about how they have affected him. He is the
2 only one in this room who can do that, who has had to live
3 through them and can tell you the effect they have actually had
4 on him, but I ask the Court to consider these conditions and do
5 not impose a sentence that the government requests of a
6 lifetime of enduring these conditions.

7 I briefly want to talk about his history and
8 characteristics in support of and sort of address the
9 government's argument a little bit which is that in support of
10 his life sentence or the request for a life sentence, the
11 government uses a little bit of Mr. Schulte's support network
12 and his loving and extended family against him.

13 He grew up in a stable and loving household, a great
14 education, started a fine career. They use that to argue that
15 even with those advantages and a loving network, he still
16 engaged in this conduct, that he will never be deterred. But
17 it ignores that even accepting all of the facts that the
18 government has argued, that he lived most of his life as a
19 law-abiding United States citizen. And then, according to
20 them, things went off the rails for a relatively minor reason
21 and caused unprecedented harm. But the support systems in
22 place that nurtured him and allow him to be an exceptional
23 student, an exceptional programmer, an exceptional brother, an
24 exceptional son, are still there. And not only are they there
25 but those same people, that same network is willing and able

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1 and ready to get the train back on the rails, to get it back on
2 track.

3 When he worked for the CIA he was relatively sheltered
4 given the nature of his work, he was far away from the support
5 network. In the jail and the SAMs he is away from his family,
6 away from his network, away from reality. He barely speaks to
7 them and calls and visits that are recorded and monitored
8 they're brief, short, they don't -- they just scratch the
9 surface.

10 As the letters from his friends and family all speak
11 to, he has an incredible support network, he is an extremely
12 giving person to them as a family and he has leaned on them and
13 they've leaned on him.

14 A life sentence or the equivalent of a life sentence
15 in years with SAMs restrictions is a sentence depriving him of
16 all meaningful human contact. A sentence that allows him to
17 return to his family with strict post-release supervision
18 provisions is a sentence that is sufficient but not greater
19 than necessary.

20 Thanks, Judge.

21 THE COURT: Can I just ask you one question,
22 Mr. De Castro, which is that in your sentencing submission you
23 represent that without the terrorism enhancement your
24 calculation of the guidelines would be 210 to 262 months in
25 prison.

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1 MR. DE CASTRO: Yes.

2 THE COURT: I am wondering how you got that. I tried
3 to do my own calculation of that and I came up with a very
4 different number, namely 324 to 405. Maybe you were including
5 the other enhancements that you were objecting to but I just
6 want to do the math. I think if you subtract 12 points from
7 the calculation in the PSR it results in 39 points for group 1,
8 but because of the relationship between groups 1 and 2 and 3,
9 then it results in an additional two points by virtue of the
10 number of units in the grouping analysis which results in an
11 offense level of 41 and a guidelines range of 324 to 405.

12 I just wanted to give you an opportunity to comment on
13 that. Again, I have found the enhancement does apply but I am
14 just wondering what it would be without it. And the government
15 can also opine on this, if you wish.

16 MR. DE CASTRO: One second, Judge?

17 (Counsel conferring)

18 MR. DE CASTRO: Judge, my recollection, I am looking
19 at it right now and then you are asking me to do math?

20 THE COURT: Sorry. Math on the spot not fair, but.

21 MR. DE CASTRO: I think we also did two points for
22 zero point offender off, I think that was one, and I think it
23 is applying our other objections. But even at the 324-405 we
24 are not in life imprisonment-land as an advisory range and
25 obviously the Court can vary.

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1 If I can mention also, on the terrorism enhancement, I
2 know the question was for the government but on the disregard
3 of the terrorism enhancement or the fact that it is taking a
4 wrecking ball to the guidelines, we obviously make our point
5 there and cite the cases, the cases on that. But I can say
6 sort of anecdotally, I was recently in a hearing two weeks ago
7 in this court or the court house next-door where Judge
8 Hellerstein, he didn't give his reasoning, necessarily, because
9 our sentencing was sort of adjourned, but what he said he was
10 doing was, our position was the same as it is here and he was
11 fine with the increase in offense level and he eliminated the
12 movement across to the Criminal History VI. He basically
13 signaled that to us. That is my view on that. But I think
14 that what that represents is, you know, another Court in this
15 court house, another Judge in this court house, a very senior
16 member of this court that also sees and has handled a lot of
17 those kinds of cases that -- sees the exact same thing, which
18 is, OK, we are just throwing everybody into the life
19 imprisonment advisory guideline range which is exactly why I
20 say, and courts have said, and everybody has said, this
21 mathematical approach to sentencing just is inhumane and
22 doesn't work.

23 THE COURT: Not that it matters, but I think just
24 enhancing the offense level and not adjusting the Criminal
25 History Category still results in a life recommendation of the

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1 guideline.

2 Just one note. The zero point offender adjustment
3 would not apply even without the terrorism enhancement because
4 it doesn't apply to where the offense was a sex offense, which
5 the CSAM offenses obviously were, and arguably wouldn't apply
6 because the defendant did personally cause substantial
7 financial hardship. The \$300 million in costs incurred by the
8 CIA in response to this I think would easily qualify. But, be
9 that as it may, I don't think that that applies.

10 Mr. Denton, I don't know if you have had a chance to
11 do the math. Do you want to give me your thoughts? Again, not
12 that it necessarily matters but using it for comparison
13 purposes.

14 MR. DENTON: So, with respect to the calculation of
15 the offense level and the defendant's Criminal History
16 Category, we agree with where your Honor ends up.

17 I think I would just note that in discussions that we
18 have had about this, if we were there we would probably be
19 having a very different conversation about whether the
20 government was making application for a departure under the
21 Guidelines. So, the math as far as the table we agree with. I
22 think anything beyond that is a little bit speculative.

23 THE COURT: Understood.

24 And, Mr. De Castro, any objection to the government's
25 proposed forfeiture order?

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1 MR. DE CASTRO: We may, Judge.

2 So, actually we didn't have a chance to talk about it.
3 I received it this afternoon and so I have spoken briefly to
4 Mr. Schulte about it, and without knowing exactly what each of
5 these devices really is and I have to cross-reference the
6 voluminous discovery, I just need some time to take a look at
7 it.

8 THE COURT: I'm not sure that I can defer imposition
9 of forfeiture. Restitution, by statute, I can up to 90 days,
10 but I think forfeiture has to be part of the oral pronouncement
11 of sentence. So I don't want to hold up sentencing on account
12 of that but I'm not sure we can defer it.

13 MR. DE CASTRO: I don't have enough information about
14 those drives. We would object to anything that that is not
15 related to the offense in any way that has, for example, his
16 personal information on it. The hard drive that has his
17 resumes and word products on it he should receive. I don't
18 know from -- I don't remember from any of the testimony at the
19 trials -- the two trials I was not present for, the one I
20 was -- that there was anything related to, for example, a
21 tablet that is on there. There is no tablet so I don't think
22 that is necessarily -- because I think what the government has
23 done here is to say, OK, we seized everything from his
24 apartment so we are just going to keep it all. But without
25 some sort of finding that is within the Court's province that

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1 this is related in some sense to the offense, why isn't it
2 being returned?

3 THE COURT: Mr. Denton, there is a substantive
4 question and procedural one. One is procedural: Can I defer
5 on this, either by imposing forfeiture consistent with the
6 order, subject to reconsideration or revisiting it if it needs
7 to be modified; the second is substantive, with respect to what
8 he proposed in the forfeiture order.

9 MR. DENTON: So, with respect to the procedure, your
10 Honor, I believe that what you proposed is correct, that
11 forfeiture with respect to specific property does have to be
12 imposed today in some form, the defendant must be alerted to
13 that as part of the sentencing proceeding, but I believe there
14 is sort of opportunity for the Court to amend forfeiture under
15 Rule 36.

16 (Counsel conferring)

17 MR. DENTON: I apologize, your Honor.

18 We were just discussing the fact that certainly to the
19 extent that the Court imposed forfeiture and Mr. De Castro, on
20 Mr. Schulte's behalf, wants to make an application after the
21 fact we may have other arguments with respect to it but we
22 certainly would not object to it as being untimely, given that
23 we are going to have to continue to address restitution over
24 the next 90 days.

25 I think with respect to the substance and the

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1 particular property, it is actually not the case that we just
2 listed everything seized from the defendant's apartment. It is
3 sort of the specific set of computer peripherals, most of which
4 there was testimony about. In some cases those are hard drives
5 that either were, in fact, or at a minimum appeared to have
6 been wiped that were part and parcel of sort of the cleansing
7 of the defendant's computer electronics that happened in
8 connection with the 1030(a)(1) offense following the
9 transmission.

10 So we do think that kind of between the two different
11 courses of conduct that went through his home electronics, the
12 CSAM offenses where the forfeiture is governed by 2253 and the
13 1030 offenses where it is governed by 1030(i), in both cases
14 sort of the computer peripherals in particular were property
15 that was involved in the offense and therefore subject to
16 forfeiture.

17 THE COURT: Mr. De Castro, based on the government's
18 representation I am just quickly looking at Rule 36 and it
19 certainly does reference an amendment to the order which seems
20 to contemplate that there are circumstances under which the
21 forfeiture order can be amended. Do you have any objection to
22 my imposing forfeiture as proposed in the order today, with the
23 understanding that within a certain amount of time you can
24 propose any amendment or modification to it?

25 (Defendant and counsel conferring)

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1 MR. DE CASTRO: That's fine, your Honor.

2 THE COURT: Thank you.

3 Mr. De Castro, let me just say for the record I know
4 this wasn't the easiest CJA assignment, and especially since
5 you sort of came into it after several years of substantial
6 litigation and it was a lot to get up to speed on, I want to
7 commend you and say that you performed an admirable job on
8 behalf of your client and I thank you and Mr. McManus on his
9 behalf.

10 MR. DE CASTRO: Thank you, Judge.

11 THE COURT: Mr. Schulte, if there is anything you wish
12 to say before I sentence you, this is your opportunity to do
13 so. I would just ask that you speak into the microphone and
14 speak slowly and clearly.

15 THE DEFENDANT: Yes. I have about 25 to 30 minutes,
16 if the Court allows it.

17 THE COURT: Go ahead.

18 THE DEFENDANT: Over the past 1,950 days I have been
19 tortured by the United States government, subjected to
20 conditions worse than every other prisoner in the western
21 hemisphere, including death row inmates. I have been tortured
22 in atypical conditions worse than those that both the Supreme
23 Court and several Courts of Appeals have found to violate the
24 Fifth and Eighth Amendments of convicted death row inmates, and
25 all before I was even tried.

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1 Unlike typical prisoners housed in the BOP in state
2 prisons, I am not housed with other people. I cannot leave my
3 torture cage to mingle with other human beings. Unlike typical
4 prisoners, I cannot access recreation 24/7 to play physical
5 sports or exercise. Unlike typical prisoners, I have no access
6 to television, MP3 players, tablets, e-mail, or even simple
7 battery powered radios offered to general population. I have
8 no access to the institutional library to check out books. I
9 have no access to typical educational activities such as
10 college courses, teaching, or programs to reduce sentence time.
11 Instead of 300 monthly phone minutes given to general
12 population, I am given 30. I get no private contact visits
13 with family or attorneys. I am even severely restricted in
14 sending and receiving mail. The FBI seizes many items sent to
15 me and the rest are delayed by several months.

16 Unlike typical prisoners, I cannot access the
17 commissary to purchase foods, snacks, medicines, clothing,
18 electronics, puzzles and other resources. Unlike typical
19 prisoners, I have no access to religious services for the
20 practice of my religion. According to the 2018 ASCA-Liman
21 Nationwide survey Time-in-Cell, only 5.7 percent of prisoners
22 in the United States have been confined to solitary for more
23 than five years, like me; 9 percent have no access to in-cell
24 programming, like me; 3 percent have no access to TV and music,
25 internet or the library, like me; 66 percent have no access to

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1 tablets; and zero percent, at the culmination of all of these
2 restrictions, including severe restrictions and all
3 communications including intra-prison mail and social visits.

4 The United States federal government tortures me in a
5 concentration camp with sleep deprivation with 24/7 blaring
6 lights, 24/7 blasting speakers, 24/7 extreme cold with no heat
7 in the winter, 24/7 starvation with reduced food and skipped
8 meals, and of course, 24/7 indefinite solitary confinement with
9 no human contact ever.

10 I have no hot water to wash my hands or shower with,
11 no clock to note the time, and the window is blacked out to
12 block the free world. I have minimal to no dental or medical
13 access or treatment. I have limited to no access to paper,
14 pens, outside recreation, the law library, or any normal prison
15 resource. If I am granted access to the law library, which is
16 a five by five cage with an often dysfunctional digital law
17 library, I am either given very little time or left in for
18 eight to 10 hours with no food, and forced to urinate and
19 defecate on the floor.

20 I almost never get recreation because I am told there
21 is not enough staff. I have had three days of recreation in
22 the past four months. Instead, I am confined to my torture
23 cage for 24 hours a day, seven days a week.

24 I have been held in torture cages with sewage up to my
25 ankles. Instead of moving me, the correction officers stuff

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1 blankets in the space between the bottom of the door and the
2 floor to ensure the sewage was kept in my torture cage and not
3 on the unit so they would have to clean it. I assure you that
4 you cannot even imagine what it is like to be locked in a small
5 cage with sewage. I repeatedly vomited but there was nothing I
6 could do to escape. Likewise, I have been held in torture
7 cages with leaking walls and ceilings coated with mold and
8 fungi, rats and cockroaches infesting the cages day and night
9 and dying under bolted chairs and in the walls adding rodent
10 decay to the constant aroma of sewage and rot.

11 I have been in torture cages so cold that ice actually
12 accumulates near the windows. I have even -- I never even saw
13 the outside or breathed fresh outside air for over three years.
14 I have had to wash my clothes in my toilet, gone without toilet
15 paper or running water and been forced to eat with my bare
16 hands like an animal. I have had to bang my torture cage door
17 to try to inform the presiding officer of missed meals, sewage,
18 or other issues, only to be ignored and to have the small
19 window slot and the door slammed in my face. They look down
20 upon you as if you are not human, the lowliest filth.

21 Often times, when the other officers take a break,
22 they would wander upstairs to our unit as their friend shows us
23 off like a zoo, opening the window slot, pointing and defining
24 each man as the crimes he was accused of or other fun facts --
25 *there is El Chapo; that is the terrorist who ran those people*

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1 down on the highway; here is the CIA traitor -- sometimes
2 banging on the door to get each slave to turn and look towards
3 the officer and his friend for them to sneer at you with
4 disgust and laugh.

5 I have also been physically assaulted, thrown to the
6 ground, stomped upon, held nearly nude in an open cage to the
7 freezing outside air, while shivering, my wrists twisted behind
8 my back far enough to dislocate, and my head smashed against
9 the wall or enough to cause a concussion.

10 One of the officers even frequently came to my torture
11 cage to watch me sit on the toilet despite his 24/7 camera feed
12 from his desk.

13 In drastic contrast with typical prisoners, I have
14 absolutely no resources to spend my time or busy my mind. I
15 spend my time doing absolutely nothing in my torture cage
16 slowly losing my mind. The best time during my days are those
17 when I came to loss of conscious, whether I dream or not, but
18 just to be able to cease existing and thus cease the pain and
19 torture for however long that I can is a relief.

20 Just as Viktor Frankl, and other concentration camp
21 survivors described dreams and consciousness to be their own
22 respite, so is it with American concentration camps. Thus,
23 picture a man wearing all the clothes provided to him curled up
24 with all the blankets provided to him, shivering in the
25 freezing cold, starving and exhausted, while bright lights and

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1 loud speakers assault him, longing for death as he desperately
2 tries to attain the loss of consciousness. Now picture this
3 for every second of every minute of every hour of every day for
4 the past 2,000 days, and you have an approximation not of Nazi
5 Germany, Soviet Russia, or communist China, but New York City's
6 very own Auschwitz. You will still not understand nor could
7 you possibly grasp an approximation of the concepts for this
8 torture unless you actually experience it, which is why Charles
9 Dickens said that very few men are capable of estimating the
10 immense amount of torture and agony which this dreadful
11 punishment, prolonged for years, inflicts on the sufferers. I
12 hold this slow and daily tampering with mysteries of the brain
13 to be immeasurably worse than any torture of the body because
14 its wounds are not upon the surface and it exerts few cries
15 that human ears can hear.

16 Indeed, as Dickens said: Indefinite solitary
17 confinement devours the victim from the inside out and no
18 person who truly experiences it, desires anything but to end
19 this torture in any way possible. To simply crave
20 non-existence, how could any rational person not?

21 As so-called psychologists in prison seek to treat the
22 effects of long-term solitary confinement with more solitary
23 confinement is something that only the SS could dream up. This
24 is precisely why "concentration camp" is an apt name for my
25 place of torture. There is no exaggeration. Nazi

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1 concentration camp survivors have themselves made the
2 comparison to solitary confinement and equivocated the mental
3 torture which they unanimously agreed was worse than any of the
4 physical pain.

5 I can relate to much of what Viktor Frankl writes in
6 his *Man's Search for Meaning*, particularly when he calls camp
7 life provisional existence of unknown limits, which is the
8 perfect example of life in an American concentration camp as
9 well. Frankl also writes: This intensification of inner life
10 helps the prisoner find a refuge from the emptiness,
11 desolation, and spiritual poverty of his existence by letting
12 him escape into the past. When given free rein, his
13 imagination played with past events, often not important ones,
14 but minor happenings and trifling things. His nostalgic memory
15 glorified them and they assumed a strange character. Their
16 world and their existence seemed very distant and the spirit
17 reached out for them longingly: In my mind I took bus rides,
18 unlocked the front door of my apartment, answered my telephone,
19 switched off the electric lights. Our thoughts often centered
20 on such details and the memories could move on to tears.

21 Like Frankl's experience, while seeking oblivion, I
22 reach for and live entirely in the past recalling when I could
23 turn off a light, have a hot shower, a full stomach, feel the
24 wind or rain on my face, experience the monotony and tedium of
25 ordinary life, or simply sit down across from another human

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1 being and speak to him.

2 Multiple Nobel Peace Prize laureates have likewise
3 condemned the torture of solitary confinement. Nelson Mandela
4 wrote in his autobiography that his two-week stint in solitary
5 was the worst torture he ever experienced in his life, which he
6 had initially sought himself in exchange for wearing specific
7 clothing, not realizing how bad solitary really was and then
8 begged for its reversal. He wrote: I had never been in
9 isolation before and every hour seemed like a year. There was
10 no natural light in my cell, a single bulb burned overhead 24
11 hours a day. I did not have a wristwatch and I often thought
12 it was the middle of the night when it was only late afternoon.
13 I had nothing to read, nothing to write on or with, no one to
14 talk to. The mind begins to turn in on itself and one
15 desperately wants something outside of one's self on which to
16 affix one's attention. I have known men who took half a dozen
17 lashes in preference to being locked up alone. After a time in
18 solitary, I relished the company even of insects in my cell and
19 found myself on the verge of initiating conversations with a
20 cockroach.

21 I can say here today that I have actually spoken to
22 the cockroaches and rats in my torture cage, as well as
23 objects, as Tom Hanks individualized his volleyball in Cast
24 Away. The crazy part it is doesn't even seem crazy after a
25 while. As Nelson Mandela summed it up, nothing is more

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1 dehumanizing than the absence of human companionship.

2 Today, the United Nations Nelson Mandela Rules state
3 that anything over two consecutive weeks of solitary
4 confinement is a form of torture and a human rights violation.
5 The entire field of psychology unanimously concurs with this
6 assessment. In fact, there is not a single study of solitary
7 confinement where a non-voluntary confinement, that lasted
8 longer than 10 days, failed to resolve negative psychological
9 effects and even a few days of solitary confinement
10 predictively shifts the EEG pattern towards an abnormal pattern
11 characteristic of stupor and delirium.

12 Not only have I experienced the typical psychological
13 effects of solitary -- anxiety, depression, paranoia,
14 hypersensitivity, cognitive dissonance, lethargy, impaired
15 mental functioning, which these scientific words can hardly
16 describe what it is like to actually believe the sadist
17 inspired to move the fungus on one wall to the other, or
18 created a wall stain insulting you, or feeling so
19 claustrophobic you can't breathe or perceiving a particular
20 rat's footsteps, to be so tired and depressed that you cannot
21 even get up to eat or drink. Furthermore, long-term solitary
22 confinement does not only impair its victims psychologically
23 leading to mental illness and death, it also has numerous
24 neurological and physiological detrimental effects. As a
25 direct result of my torture at the hands of this government,

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1 there is reduced electrical activity and neuron growth in the
2 brain, decreased connections between neurons and fewer blood
3 vessels in the brain leading to decreased cognition and poor
4 performance on intellectual and perceptual motor tests.

5 Solitary causes hypertension, heart attacks, strokes, insomnia,
6 deterioration of eyesight, and drastically increases the
7 likelihood of these effects.

8 Studies have also found direct causality with
9 longevity. One study estimated a loss of 10 years of life
10 expectancy for four years of solitary, as well as decreased
11 longevity even after release such as 15 times likelier to die
12 within five years of release compared to prisoners never
13 exposed solitary and 127 percent higher likelihood to die
14 within the first two weeks after release. The scientific
15 literature on the effects of solitary continues to grow and
16 warn of its permanent damage.

17 The United States federal government condemns Russia,
18 China, North Korea, and other countries for human rights
19 abuses, yet the United States operates concentration camps and
20 tortures and murders its own people right here. While the
21 government only scoffs and says that I deserve to be tortured,
22 I deserve to be in a concentration camp, I say no man deserves
23 to be tortured and I have no doubts that history will side with
24 me as scores of years from now our descendants will recall this
25 torture, the use of solitary confinement, and those who

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1 perpetrate it, with the same contempt and revulsion as the
2 1940s concentration camps and those who perpetrated them.

3 These tortures are also well documented in court.
4 Contrary to the government's assertions, these tortures have
5 absolutely nothing to do with SAMs. SAMs neither authorizes
6 nor encourages this torture. Thus, my challenges were not to
7 SAMs but habeas corpus petitions based on my conditions. Since
8 my conditions of confinement were worse than conditions for
9 sentenced death row inmates found unconstitutional I did not
10 think this would be an issue.

11 My first challenge to the conditions of confinement in
12 2018 were ordered administratively closed until I was
13 convicted. My appeal was dismissed. My second habeas
14 challenge in 2019 was dismissed and the judge ordered I must
15 file the habeas petition in my criminal case, not as a separate
16 civil case, and my appeal was dismissed. So, I filed a third
17 habeas petition in 2021 in my criminal case which was dismissed
18 and the judge ordered I must file a habeas petition as a
19 separate civil case, not in my criminal case -- the exact
20 opposite of the previous order. So I again filed an appeal
21 asking the Second Circuit to resolve this issue in which every
22 Court refused to even entertain my habeas petition. Once
23 again, the Second Circuit dismissed the case without a reason.
24 I followed all the rules and procedures.

25 Even though this confinement condition issue was the

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1 same issue reviewed by other district courts, courts of appeals
2 and the Supreme Court, and even though I filed nearly identical
3 briefs as the attorneys in those cases because I was too poor
4 to pay an attorney, my cases were not even entertained by the
5 courts. Because it said "pro se" next to my name, no Court
6 read a single word I wrote. Even if I were the best attorney
7 in the country, nothing I wrote would ever be read.

8 Furthermore, although the complaints of my conditions
9 were read by the government, the government took no action of
10 its own to remedy any of the issues. The Bureau of Prisons
11 simply does not care how it treats those it is responsible for
12 but it considers us all to be a slaves and that our lives are
13 worthless. It is not only the deliberate human rights abuses,
14 but perhaps worse is the callous disregard for other human
15 beings. And the BOP will never change because there is no
16 political pressure or public outcry and the only thing
17 remaining to uphold the principles of the republic is the
18 judiciary. The courts must incentivize the Department of
19 Justice to actually want the BOP to change.

20 Now I want to spend a few minutes on the government's
21 proposed 30-plus year trial penalty. Before trial, the
22 government wrote up a plea deal for zero to ten years on the
23 espionage, and zero to five years on the CP charges. The
24 government repeatedly asserts that the espionage crime was so
25 heinous that the defense's proposed 48-month sentence is a

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1 mockery of justice and only life in prison will suffice. Such
2 statements to the Court are clearly disingenuous as both the
3 CIA and the DOJ approved of a zero to ten-year sentence for the
4 same conduct they now claim requires life in prison. Not only
5 did the CIA and DOJ believe that a zero to ten-year sentence
6 was appropriate, but the Pimentel letter given to the defense
7 did not include the terrorism enhancement. They offered
8 similar plea deals after the first trial ended in a hung jury.
9 In both instances the defense made clear that any plea deal
10 must preserve my right to appeal at least the concealed
11 discovery issue. The government refused the defense access to
12 the most critical discovery in the case: The forensic crime
13 scene, but allowed its own experts access as well as all
14 derived testimony. This is an issue of first impression with
15 any Court of Appeals because up until now, the government only
16 provided the defense with complete forensic images of all
17 computers involved in the alleged crime. This is the first
18 case in the history of the United States in which the
19 government refuses to provide the defense with forensic images.

20 The government's case-in-chief is that I used my CIA
21 work station to access the server distilled from a third sever
22 and provided the defense access to none of these three
23 essential computers. None. Instead, the government forced the
24 defense to forego an independent examination and instead rely
25 upon the findings of the government's experts who picked out

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1 which forensic artifacts it wanted to focus on and ignore the
2 rest. Thus, I could not call my forensic witness because they
3 could not testify without conducting an independent forensic
4 examination, the entire purpose to his expertise and why he was
5 hired. The government's expert not only received this access,
6 but also stated in affidavits that reviewing the complete
7 forensic images was the only way to conduct the forensic
8 examination and they could not do so otherwise and could not
9 have found any of the forensic evidence it intended to use at
10 trial without the complete forensic images. So, not only could
11 the defense call no expert or present any defense, but it also
12 could not cross-examine the government witnesses by reproducing
13 any of its findings or subjecting them to an independent
14 analysis.

15 In essence, the defense had no right to an expert
16 which the appeals attorney working on this case told me was
17 absurd and a guaranteed reversal on appeal, or on divine
18 intervention. He believed it was barely a step away from just
19 declaring the defendant guilty without a trial, akin to the
20 Oppenheimer security clearance review.

21 Regardless, counsel advised this was an issue that
22 should not be waived, but of course the government refused to
23 allow my right to appeal on this issue because the government
24 knows it will be reversed, and so sought to win through
25 coercion and intimidation, giving me an ultimatum to either

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1 give up my right to appeal or face full tyranny and oppression
2 of the United States government, tortured in a concentration
3 camp for life.

4 So I want this Court to know that this case could have
5 ended in 2020, four years ago. I knew that without access to
6 the key forensics I could never have a fair trial, so through
7 my attorneys I made it clear that the plea must preserve this
8 issue on appeal. The government refused. Thus, here we are
9 four years later.

10 The government's proposed sentence of life in prison
11 is nothing short of old fashioned Mafia-style bullying,
12 coercion, and intimidation. It is a penalty for not doing what
13 the government commanded. It is a penalty for advocating my
14 right for an appeal. The district courts are not infallible,
15 they make mistakes all the time, honest mistakes, thus the
16 appeals court exists to review the lower courts. It would be a
17 monumental injustice to punish me with over 30 extra years in
18 prison simply because I wanted to reserve my right to an
19 appeal.

20 The Supreme Court has already voiced its concern about
21 the coercive nature of plea bargaining. The trial penalty of
22 30-plus years now proposed by the government is both
23 unprecedented and erodes the very foundations of justice. What
24 innocent man would not choose to falsely condemn themselves and
25 risk over 30 years in prison? The DOJ and CIA approved a zero

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1 to ten-year penalty for espionage. They would not have done so
2 if they did not believe it to be an acceptable outcome and
3 sentence. Thus, this Court should not even consider any
4 sentence beyond the approved penalty.

5 Furthermore, it should be clear from the government's
6 proposed sentence that this is not justice the government
7 seeks, but vengeance. Today the DOJ and CIA seek to commit
8 torture and murder under the guise of justice. The CIA seeks
9 its revenge upon a man they believe embarrassed and wronged
10 them, and the DOJ seeks to make a statement to all. All of
11 those who refuse to relinquish their right to appeal and plead
12 guilty will be punished severely for doing so. Is there truly
13 a difference between beating a man until he pleads guilty and
14 forcing a man by threatening life in prison unless he pleads
15 guilty?

16 The United States federal government condemns Russia,
17 China, and North Korea for coercive unjust legal systems based
18 on intimidation, yet the United States seeks to do the same
19 here under the guise of justice.

20 The Court should reject vengeance and look to the
21 facts. The government does not dispute that the average
22 sentence in 793 cases is five years, nor does it dispute that
23 no one has ever been sentenced to more than six years. The
24 district courts have unanimously declined to follow the 793
25 guidelines finding them overly punitive. The 793 guidelines

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1 are even worse than the CP guidelines in that they mandate a
2 first-time offense of either the statutory maximum for secret
3 documents or double the statutory maximum for top secret
4 documents. The Second Circuit, itself, expressed serious
5 doubts on the applicability of the 3793 guidelines in dictum in
6 *United States v. Malachy*. Thus, this court should like way
7 follows the other courts in the circuit and across the country.
8 While the probation office proposed an unprecedented sentence
9 of five times the average, even that sentence disparity is not
10 enough for the government. Since the government seeks
11 vengeance and a life sentence it says, well, let's pretend I
12 was convicted for a different crime where life sentences are
13 actually given and then quote those cases. This is beyond
14 absurd. The government is clearly trying to manipulate the
15 court seeking the unprecedented in the hopes that the Court
16 will split the difference and still hand down a sentence of
17 triple or quadruple the average.

18 Nor is the government's argument that the case is
19 unique a truthful statement. The government's entire sentence
20 is predicated upon the CIA's loss of its cyber tools but
21 WikiLeaks has never released the CIA's cyber tools. Those
22 tools were stored in Stash. WikiLeaks only released
23 Confluence, which was an internal unofficial blog in Wiki,
24 which contained almost no classified information and was
25 described by nearly every CIA witness and FBI 302s as

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1 insignificant, yet the government does not even mention
2 confluence or single harm resulting in its disclosure.
3 Furthermore no Stash files of a single CIA cyber tool were
4 presented to the jury nor even provided to the defense in
5 discovery. The defense filed numerous motions for access to
6 Stash and all were denied. The CIA even admitted in GX- 5001
7 that, "We cannot determine the precise scope or the loss
8 because DevLAN did not require user activity monitoring or
9 other safeguards that exist in our enterprise systems."

10 To this day, the CIA has absolutely no idea what was
11 taken besides the published Confluence files. The protocol
12 requires them to assume the worst, scrap everything, and start
13 over, but justice is based on due process, not assumptions.
14 Since the Stash cyber tools were never disclosed by WikiLeaks,
15 provided to the jury, or produced to the defense in discovery,
16 might well have been proof of any reliance of this material at
17 sentencing. And any attempts by the government to compare this
18 to Pearl Harbor, where the United States was literally attacked
19 by another country, 19 naval ships sunk or damaged and 2,403
20 people murdered in an act of war, is a disgusting exaggeration
21 that does not even merit a response.

22 So the 48-month sentence for the espionage case is not
23 only reasonable but consistent with other 783 espionage cases
24 and within the government's zero to 10-year approved penalty
25 for the crime, and hence, not possibly include my conditions of

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1 confinement. And so, the truly difficult question for this
2 Court today is how do you quantify torture.

3 Torture is always wrong and matters not what crime the
4 government alleges. Torture is never a just punishment. How
5 much typical prison credit would a man interred at Auschwitz
6 receive? What about New York City's Auschwitz? What is a just
7 multiplier for the 1,950 days I was tortured? Even if the
8 Court sentences me to the maximum 15 years of the government's
9 approved penalty and applies the lowest multiplier of 2 used
10 for people housed in general population, the result would still
11 be time-served. Yet a multiplier of only 2 is vastly unjust.

12 Justice encompasses not only the process of
13 adjudicating guilt or innocence but also the punishment given.
14 Any punishment given in excess of the crime committed is an
15 affront to justice and, indeed, the greatest crime of all.
16 Here my punishment of torture in a concentration camp far
17 exceeds the convicted crimes not because those crimes are not
18 serious, but due to the unconscionable brutal, barbaric, and
19 inhumane torture imposed by the government. There is simply no
20 just multiplier to those 2,000 days of immense torture by
21 infinity and yet there is another reason for the sentence.

22 We should not be here forced to quantify torture yet
23 the government chose to torture me, and the Bureau of Prisons
24 continues to do so and neither respects your authority nor
25 honors any order from the judiciary. The BOP is a rogue

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1 Executive Branch agency that will never be reined in until the
2 Court's heavily incentivizes the DOJ to make long-needed
3 corrections to the BOP by sentencing those tortured and abused
4 in BOP facilities to time-served. How quickly will the BOP
5 then leap to obey the judiciary as required by the
6 Constitution? Until then, the DOJ will take immense pride in
7 its concentration camps and continue to torture those it hates
8 and despises, taking special satisfaction in my pain and
9 suffering.

10 And, of course, you now know that the BOP has brutally
11 tortured me in the past and will continue to torture me for
12 whatever additional sentence you impose. The BOP invites this
13 Court to be a party to torture and to violate not only the
14 principles of a republic based on inalienable human rights, but
15 also to violate the Torah, all the laws of God, and the very
16 concepts of morality, honor, and justice. That is an
17 invitation that this Court should categorically refuse.

18 In conclusion, I ask this Court to follow the other
19 district courts and the dictum of the Second Circuit and reject
20 the espionage guidelines and, instead, adopting the range used
21 on average by these Courts. I ask the Court to reject the
22 government's offer to pretend I was convicted of a different
23 crime and its offer to rely upon materials never publicly
24 disclosed, presented to the jury, or provided to the defense.
25 I ask the Court to reject the government's request for

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1 vengeance and its coercive use of plea deals by capping the
2 incidents of espionage to the zero to 10-year penalty approved
3 by and written on paper by the CIA and DOJ.

4 Finally, I ask this Court to take my torture for
5 nearly 2,000 days in a concentration camp into its
6 consideration. The need to provide substantial incentive for
7 the DOJ to end the BOP's blatant human rights atrocities and to
8 reject the BOP's invitation to become a party to its immoral
9 human rights abuses abhorrent to all the laws of God. I ask
10 this Court to consider my incarceration since 2017 and 2,000
11 days of torture as sufficient punishment and sentence me to
12 time-served.

13 Thank you.

14 THE COURT: Let me say immediately that I think the
15 record is what the record is and not all of it bears out
16 everything that Mr. Schulte just said. I ruled several times
17 with respect to some of the issues that he commented upon,
18 including access to the so-called forensic crime scene and the
19 distinction between Stash and Confluence and access thereto and
20 obviously he will have the right to appeal those rulings, but I
21 don't think that he has accurately characterized them.

22 I will also say that I have gone to great lengths in
23 this case, more so than any other case in the 12 years I have
24 been on the bench, to contact and deal with the BOP and MDC
25 with respect to certain issues that have arisen over the course

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1 of the two and a half years or so that I have presided over it
2 and there, too, I'm not sure that the facts support everything
3 that Mr. Schulte has described, which is not to say that the
4 conditions of his confinement have not been difficult and I
5 will have more to say on that in due course.

6 Be that as it may, Mr. Denton, I am going to give you
7 an opportunity to respond, if you wish, just because
8 Mr. Schulte spoke for 29 minutes. If there is anything that
9 you wish to say in response, I would give you an opportunity to
10 be heard.

11 MR. DENTON: Your Honor, I think I would be happy to
12 address anything in particular that the Court would like to
13 hear from the government on, but otherwise I think we generally
14 agree with the assessment that not everything he said is borne
15 out by the record.

16 THE COURT: Do you know if there is any victim present
17 who wishes to be heard?

18 MR. DENTON: I was not alerted to anyone who wished to
19 speak in advance of the proceeding, your Honor, so I don't
20 believe so.

21 THE COURT: Thank you.

22 Counsel, is there any reason why sentence should not
23 be imposed at this time?

24 MR. DE CASTRO: No, your Honor.

25 MR. DENTON: No, your Honor.

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1 THE COURT: In imposing sentence I am required to
2 consider the factors set forth in 18 U.S. Code Section 3553(a).
3 They include, first, the nature and circumstances of the
4 offense and the history and characteristics of the defendant;
5 second, the need for the sentence imposed to advance the
6 purposes of sentencing, namely, to reflect the seriousness of
7 the offense, to promote respect for the law and to provide just
8 punishment for the offense, to afford adequate deterrence to
9 criminal conduct; to protect the public from further crimes of
10 the defendant, and to provide the defendant with needed
11 education or vocational training, medical care, or other
12 correctional treatment in the most effective manner; third, the
13 kinds of sentences available; fourth, the guidelines range or
14 sentence which I have found to be life imprisonment; fifth, any
15 pertinent policy statement; sixth, the need to avoid
16 unwarranted sentencing disparities among defendants with
17 similar records who have been found guilty of similar conduct;
18 and seventh, the need to provide restitution to any victims of
19 the offense.

20 Ultimately, I am required to impose a sentence that is
21 sufficient but no greater than necessary to comply with the
22 purposes of sentencing that I mentioned a moment ago.

23 Sentencing is perhaps the most difficult task that a
24 judge has and this sentencing is especially challenging just
25 given the sheer length of the record here and the number of

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1 offenses that Mr. Schulte has been convicted of and everything
2 that I have observed over the last two and a half years.

3 Let me start by saying that I absolutely agree with
4 the government that a substantial sentence is warranted and
5 that is true for several reasons.

6 First and foremost, it is the seriousness of the
7 offenses. It is hard to overstate the seriousness of the
8 espionage offenses. This was the largest leak in CIA history
9 and one of the largest unauthorized disclosures of classified
10 information in the history of the United States. It did have,
11 as substantiated by the deputy director's unclassified letter,
12 and even more substantiated by the classified letter, an
13 immediate and catastrophic effect on the CIA and caused untold
14 damage to national security and Mr. Schulte's attempts to
15 downplay that I think are not borne out by the record.

16 The monetary costs of Mr. Schulte's conduct are
17 staggering. As I mentioned, according to the deputy director,
18 the sheer cost of withdrawing the computers and networks and
19 infrastructure rose to the level of \$300 million and that is
20 merely the tip of the iceberg as those filings make plain the
21 impact on our nation's intelligence operations was enormous.
22 We will likely never know the full extent of the damage that it
23 caused but I have no doubt that it was massive and real, and in
24 contrast to Mr. Schulte's views, I do not think it is an
25 exaggeration to describe it as a digital Pearl Harbor -- not a

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1 literal Pearl Harbor but a digital one.

2 Moreover, those effects were not incidental but were
3 Mr. Schulte's design, and unlike other leakers who have been
4 held accountable for their conduct, Mr. Schulte was not driven
5 by, in any sense, misguided ill will or altruism such as
6 blowing the whistle on something he perceived to be wrongdoing
7 or problematic. Instead, he was motivated by anger, spite, and
8 perceived grievance and it is absolutely inexcusable,
9 unforgivable that he took that anger and spite out on the
10 country that he had sworn an oath to protect. In short, to
11 satisfy a personal vendetta he, as the deputy director put it,
12 cost the CIA hundreds of millions of dollars, degrading its
13 ability to collect foreign intelligence against this country's
14 adversaries, placed directly at risk his own colleagues at the
15 CIA, programs at the CIA and assets, and jeopardized this
16 country's national security.

17 That of course doesn't address the child pornography
18 counts, as the trial last fall made clear, that Mr. Schulte was
19 in possession of what can only be described as a massive trove
20 of disgusting materials made depicting the rape and sexual
21 abuse of children as young as 2 years old including images of
22 bondage and sado-masochism and involving sex acts performed on
23 children by adult men and by animals. And, as the letters
24 submitted by the government make plain, the mere possession of
25 those kinds of materials causes added injury to those who were

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1 victimized by those terrible crimes.

2 Number two, I am blown away, to put it mildly, by
3 Mr. Schulte's complete lack of remorse and acceptance of
4 responsibility. He has never once acknowledged his conduct or
5 his role in any of this and in that regard I think the child
6 pornography crimes are perhaps the most telling. The espionage
7 crimes were arguably triable only because Mr. Schulte took such
8 careful steps to cover his tracks and the evidence was largely
9 circumstantial, even if in my judgment it was ultimately
10 strong, but the trial that occurred last fall with respect to
11 the child pornography charges was, to put it mildly, a
12 bloodbath. There was overwhelming evidence. As far as I can
13 tell, Mr. Schulte had absolutely no defense and yet even there
14 he was unable, unwilling, and incapable of accepting
15 responsibility or expressing remorse for his terrible crimes.

16 Now, even worse than that, he has demonstrated a
17 complete unwillingness to conform his behavior to the law and
18 desire to inflict further damage on his victims. As the
19 government put it in its sentencing letter: Arrest did not
20 deter Mr. Schulte. Revocation of his bail did not deter
21 Mr. Schulte. Court orders and repeated reminders from the
22 Court did not deter Mr. Schulte. Even imposition of SAMs that
23 we have discussed at length today did not deter Mr. Schulte.
24 Those measures, in fact, to the contrary, and as you heard
25 moments ago, merely added fuel to Mr. Schulte's grievances and

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1 another reason to retaliate against the country that he once
2 swore to protect. I point in these regards to the conduct that
3 gave rise to the MCC charges, that is to say Mr. Schulte's
4 efforts to leak additional classified information from jail,
5 his declaration of a "information war on the United States,"
6 his threatening if he wasn't paid money to "break up diplomatic
7 relationships, close embassies, and U.S. occupation across the
8 world." And even after he was convicted of those offenses he
9 made a series of implied threats in various post-trial
10 submissions as the government recounts on page 19 of its
11 submission.

12 On top of that, there is the subject of the discovery
13 laptop, the laptop that was provided to Mr. Schulte in
14 connection with preparing his defense. Even though he was
15 subject to SAMs he abused that privilege. He created a
16 15-gigabyte encrypted partition to which, even today, the
17 government has not been able to access, and he loaded onto that
18 laptop 2400 images and videos of child pornography that he
19 viewed even while in jail and during the trial on the espionage
20 counts.

21 Thus, I have no doubt that the need to reflect the
22 seriousness of these various offenses, the need to protect the
23 public from further crimes of Mr. Schulte, and the need for
24 deterrence all point strongly to the need for a very long
25 sentence. So too, I would say, does the need to avoid

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1 unwarranted sentencing disparities for similarly situated
2 defendants. On that score, I am inclined to agree with the
3 government that Mr. Schulte is more akin to Mr. Hanssen and
4 Mr. Ames than to the cases that the defense has pointed to:
5 *Reality Winner* and *Jeffrey Sterling*. Indeed, there is an
6 argument, and the government has made it, that Mr. Schulte's
7 disclosures were even more harmful and more grave than those
8 made by Mr. Hanssen and Mr. Ames; it is a single adversary
9 given that he released it to the world without regard for who
10 accessed it and what the implications of that were. His
11 conduct is certainly a far cry from those of the *Winner* case
12 and the *Sterling* case, given the scope and scale of the
13 information that was released, given his motive, given his
14 complete lack of remorse and acceptance of responsibility,
15 given his ongoing conduct in the MCC, his continuing threats to
16 release highly classified information, and cause even more
17 damage to national security and the abuses of his laptop that I
18 described.

19 Having said all of that, I am not going to impose a
20 life sentence. I do agree and ultimately conclude that a life
21 sentence would be greater than necessary to serve the purposes
22 of sentencing. There are few reasons for that conclusion.

23 Number one, short of the death penalty, a life
24 sentence is obviously the harshest sentence available under
25 law. In my view it should generally be reserved for the

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1 absolute worst of crimes, usually crimes that have resulted in
2 the loss of life or lives and there is no evidence here,
3 although it is certainly possible, that Mr. Schulte's espionage
4 crimes resulted in the deaths of people. There is no evidence,
5 direct evidence that it did and he certainly didn't kill or
6 intentionally kill anybody.

7 Number two, as I have sort of averred to, I do think
8 that the terrorism enhancement is overly harsh, at least as
9 applied in this case. Again, without it, by my calculation,
10 the guidelines range would be 324 to 405 months. I think it is
11 harsh in part for the reason that I referenced earlier, that it
12 is triggered by two offenses that would not result in a maximum
13 penalty of anything close to life and in that regard reflect a
14 Congressional assessment that those offenses are do not justify
15 a life sentence. Obviously, I could impose a life sentence
16 here given the extent of the other crimes that Mr. Schulte has
17 been convicted of but I think there is a disconnect between the
18 statutory maximums that give rise to the terrorism enhancement
19 and the guidelines.

20 Having said that, I'm not going to and am not inclined
21 to disregard it all together because I do think that it applies
22 and itself reflects a Congressional assessment of the conduct
23 that Mr. Schulte committed but I agree that some variance is
24 appropriate to mitigate its harshness.

25 Finally, I am going to vary on the basis of the

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1 conditions of confinement. I do want to make a few things
2 clear before I explain why.

3 Number one, to a large extent, Mr. Schulte did indeed
4 bring those conditions upon himself. To the extent that he has
5 been subject to Special Administrative Measures the last
6 five-plus years is a decision. I previously worked in the
7 attorney generals' office, it is a decision made by the
8 Attorney General of the United States. I know it is not a
9 decision that is not made lightly and it was made here for
10 understandable and justifiable reasons, namely that
11 Mr. Schulte, because of his own conduct that gave rise to the
12 MCC charges, made clear that even confinement was not
13 sufficient to protect this country from the harms that he could
14 and was prepared to cause to national security. So, in that
15 regard, he did indeed bring it upon himself.

16 Number two, I want to say that any comparison to
17 victims of a Nazi concentration camp is, in my mind, offensive.
18 I'm not talking about the conditions of confinement, I'm
19 talking about the difference between someone who commits
20 serious crimes and harms this country as you have done,
21 Mr. Schulte, versus somebody whose only crime is being of
22 Jewish origin and persecuted for that reason, and to compare
23 yourself to the victims of the Nazi is offensive.

24 Number three, I want to say that as I said, I think my
25 own involvement in dealing with the MDC and BOP does not

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1 necessarily bear out everything that Mr. Schulte described in
2 his remarks, and finally I want to make clear that to the
3 extent that you suggested or insinuated that I did not read
4 every word of every submission that you made to me, that is
5 absolutely untrue. You made plenty of submissions, countless
6 submissions regarding your conditions of confinement. I read
7 every single one of them. As you know, ultimately when you
8 were before me you were detained in Brooklyn and for that
9 reason your challenges to the conditions of confinement had to
10 be brought in the Eastern District, not here. I want to be
11 clear that not only did I read all of them but I actually did
12 take unprecedented action to address many of them in connection
13 with this case.

14 Having said that, I do think that the harsh conditions
15 of confinement justify a variance from the life sentence that
16 the guidelines recommend. I have written, and written
17 recently, about the nature of the conditions of confinement in
18 general population at MDC. For those two don't know what I am
19 talking about, I certainly encourage you and urge you to read
20 my opinion in United States v. Chavez which describes, in
21 detail, the really dreadful conditions of that facility. And,
22 there is no question in my mind that the conditions in the SAMs
23 unit, to which Mr. Schulte has been subjected, are even harsher
24 and I think some of the things that Mr. De Castro mentioned are
25 really arguably not part of SAMs and in that regard, valid

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1 consideration for a variance. But the bottom line is I agree
2 that it is incumbent upon this country to treat those we detain
3 in humane manner, and even if some of the conditions of which
4 Mr. Schulte has complained are justified by his own conduct it
5 is, in my view, it is worthy to consider the conditions under
6 which he has been held and the conditions under which he is
7 likely to be held for some substantial time going forward in
8 assessing the appropriate sentence here.

9 Let me say that I am not especially persuaded by some
10 of the other arguments made in the defense submission.

11 First, the defense submission makes reference to an
12 undiagnosed -- potentially undiagnosed neuro-divergence. It is
13 undiagnosed. It is, in my view, pure speculation and perhaps
14 there is some data to support that speculation, but it is not
15 diagnosed and I am not going to take it into consideration and
16 there is certainly no suggestion in the defense submission that
17 Mr. Schulte didn't know right from wrong and wasn't capable of
18 conforming his behavior to the law.

19 Second, there is a suggestion that this conduct was
20 aberrant behavior in an otherwise law-abiding life. I don't
21 dispute that Mr. Schulte appears to have lived a law-abiding
22 life for much of his life. He did perform service to his
23 country until he betrayed his country. He obviously is a very
24 talented and very intelligent human being; I have observed that
25 and experienced that myself and his computer skills are

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1 testament to that. But the conduct for which he is being
2 sentenced today is conduct that occurred over a very long time
3 beginning in 2016 when he first stole the information at issue
4 in this case, through really the last months in this case and I
5 have described it already and not going to redescribe it, but
6 the bottom line is that conduct occurred over a long time and
7 he engaged in for days, if not weeks, engaged in the theft of
8 the materials from the CIA and the leak to WikiLeaks even later
9 than the fall of 2016. His Google searches made clear that he
10 was looking for information on WikiLeaks and why they had not
11 yet published the information. He had many opportunities, over
12 a long period of time, to rethink the conduct that got him
13 here. And, as I said before, not only did he not do that but
14 he doubled-down, even tripled-down on it in the conduct that he
15 committed while he was incarcerated.

16 I do want to comment for a moment on the letters that
17 I received from Mr. Schulte's family. They are moving letters.
18 I will single out the letter from his mother in particular. I
19 have no doubt that the pain that this experience in the last
20 six years has caused to Mr. Schulte's family is extraordinary
21 and I don't envy his parents, I don't envy his brothers, his
22 aunt, his uncle, any of his family members. But those letters
23 simply don't describe the person who has done what Mr. Schulte
24 has done over the past eight years. They don't acknowledge the
25 child pornography materials that were found on his computer and

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1 the evidence of what he did with those. And when they
2 described Mr. Schulte as the patriot dedicated to protecting
3 this country, they obviously failed to grapple with the nature
4 and gravity of what he did to harm this country and the country
5 that he swore to protect and defend. There is something
6 revealing in one of the letters, that is the letter from
7 Mr. Schulte's brother, which describes how at a moment in the
8 trial he turned to his mother and said: Did you know about any
9 of this? And her answer was: No. All of that is to say there
10 is a lot about Mr. Schulte that his family obviously didn't
11 know. I do not doubt that he was a loving and supportive son,
12 and grandson, and brother, and nephew, but the fact of the
13 matter is it doesn't reflect the person who committed the
14 crimes for which he is being sentenced today. It is a credit
15 to Mr. Schulte's family that they can and do still stand behind
16 him, but the bottom line is that what they write in their
17 letters, as moving as it is, is not justification for a lower
18 sentence.

19 With that, I will state the sentence that I intend to
20 impose. Mr. Schulte, I would ask you to please rise.

21 Mr. Schulte, it is the judgment of this Court that you
22 are remanded to the custody of the Bureau of Prisons for a
23 total of 480 months, that is 40 years, structured as follows:

24 120 months on Counts One through Three of the S3
25 indictment to be served concurrent with one another; 120 months

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1 on Counts Four and Five of the S3 indictment, concurrent with
2 one another and consecutive to Counts One and Three; 120 months
3 on Counts Seven and Eight of the S3 indictment, concurrent with
4 one another and consecutive to Counts One through Five; 40
5 months on Count Six of the S3 indictment and Counts Nine and
6 Eleven of the S2 indictment, concurrent with one another and
7 consecutive to the other counts that I just discussed; and an
8 additional 80 months on Counts Twelve, Thirteen and Fourteen of
9 the S2 indictment, concurrent with one another and consecutive
10 to the other counts. In essence, that results in a 400-month
11 sentence for the espionage and related offenses which I would
12 note is effectively within the guidelines range that would have
13 applied without the terrorism enhancement, and an additional 80
14 months consecutive for the child pornography offenses which, in
15 my view, justify and deserve their own punishment because they
16 are a discrete offense and caused separate harm above and
17 beyond the harm caused by the espionage crimes. That is to be
18 followed by lifetime term of supervised release, structured as
19 follows: Three years each on Counts One through Five and Seven
20 and Eight of the S3 indictment and on Count Nine of the S2
21 indictment; one year on Count Six of the S3 indictment; five
22 years on Count Eleven in the S2 indictment; and a lifetime term
23 of supervised release on Counts Twelve through Fourteen of the
24 S2 indictment.

25 During your term of supervised release you will be

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1 subject to the following mandatory conditions, all of which are
2 set forth on page 65 of the presentence report: You shall not
3 commit another federal, state or local crime. You shall not
4 illegally possess a controlled substance. You shall refrain
5 from any unlawful use of a controlled substance and submit to
6 one drug test within 15 days of your release and at least three
7 periodic drug tests thereafter as determined by probation. You
8 shall cooperate in the collection of DNA as directed by
9 probation. You shall comply with the requirements of the Sex
10 Offender Registration and Notification Act as directed by the
11 probation officer, the Bureau of Prisons, and any state sex
12 offender registration agency in which you reside, work, are a
13 student or are convicted of a qualifying offense, and you must
14 make restitution in accordance with that rule of law and
15 monetary fines.

16 In addition, the standard conditions of supervised
17 release which are set forth on pages 66 and 67 of the
18 presentence report shall apply. Among other things, you shall
19 not shall possess a firearm or destructive device. You shall
20 report to the probation office in the judicial district where
21 you are authorized to reside, within 72 hours of your release
22 from custody.

23 Finally, you must meet the following special
24 conditions which are set forth on pages 67 to 69:

- 25 1. You shall undergo a sex offense-specific

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1 evaluation and participate in an outpatient sex offender
2 treatment and/or outpatient mental health treatment program
3 approved by the probation department. You shall abide by all
4 rules, requirements and conditions of the sex offender
5 treatment program and refrain from accessing websites, chat
6 rooms, instant messaging or social working sites to the extent
7 that the sex offender treatment and/or mental health treatment
8 program determines that such access would be detrimental to
9 your ongoing treatment. You will not view, access, possess, or
10 download any pornography involving adults unless approved by
11 the sex offender specific treatment provider. You must waive
12 your right to confidentiality and any records for mental health
13 assessment and treatment imposed as a consequence of this
14 judgment to allow the probation department to review the course
15 of treatment and progress with the treatment provider. You
16 must contribute to the costs of services rendered based on your
17 ability to pay and the availability of third-party payment, and
18 I authorize the release of available psychological and
19 psychiatric evaluations and reports including the presentence
20 investigation report to the sex offender treatment provider
21 and/or mental health treatment provider.

22 2. You must not have contact with any victim in this
23 case. That includes any physical, visual, written, or
24 telephonic contact with those persons. Additionally, you must
25 not directly cause or encourage anyone else to have such

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1 contact with any victim.

2 3. You must not have deliberate contact with any
3 child under 18 years of age unless approved by the probation
4 department. You must not loiter within 100 feet of places
5 regularly frequented by children under the age of 18 such as
6 schoolyards, playgrounds and arcades. You must not view or
7 access any web profile of users under the age of 18 that
8 includes, but is not limited to, social networking websites,
9 community portals, chat rooms, or other online environments
10 which allow for real-time interaction with other users without
11 prior approval from your probation officer.

12 4. You are restricted from viewing, accessing and
13 possessing or downloading any sexually explicit material
14 involving minors including those created via the method of
15 morphing or other image creation format including artificial
16 intelligence. You will not view or possess any visual
17 depiction as defined in 18 U.S.C. Section 2256 including any
18 photograph, film, video, picture, or computer-generated image
19 or picture, whether made or produced by electronic, mechanical,
20 or other means, of sexually explicit conduct by a minor under
21 the age of 18.

22 5. You will not access any websites, chat rooms,
23 instant messaging, or social networking sites where your
24 criminal history, including this conviction, would render such
25 access a violation of terms of service of that website, chat

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1 room, instant messaging, or social networking website.

2 6. You shall permit the Probation Department to
3 install any application or software that allows it to survey
4 and/or monitor all activity on any computers, automated
5 services, or connected devices that you will use during your
6 term of supervision and that can access the internet. The
7 probation department is authorized to install such applications
8 or software. Tampering with or circumventing the probation
9 department's monitoring capability is prohibited. To ensure
10 compliance with this condition you must allow the probation
11 officer to conduct initial and periodic unannounced
12 examinations of any device that is subject to monitoring. You
13 must notify any other people who use the device that it is
14 subject to examination pursuant to this condition. You must
15 provide the probation department with advance notice of any
16 planned use of any device, and you will not use any device
17 without approval until compatibility is determined and
18 installation is completed. Applications for your devices shall
19 be approved by the U.S. Probation office. Once the probation
20 office ensures compatibility with the surveillance and
21 monitoring application or software, websites, chat rooms,
22 messaging and social networking sites shall be accessed via the
23 device, web browser unless otherwise authorized, and you will
24 not create or access any internet service provider account or
25 other online service using someone else's account name,

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1 designation, or alias. You will not utilize any peer-to-peer
2 or file sharing applications without prior approval of your
3 probation officer. Use of any device in the course of
4 employment will be subject to monitoring or restriction as
5 permitted by your employer.

6 You shall submit your person and any property,
7 residence, vehicle, papers, computer, or other electronic
8 communication, data storage devices, cloud storage or media and
9 effects to a search by any probation officer and, if needed,
10 with the assistance of law enforcement. Any such search is to
11 be conducted when there is reasonable suspicion concerning
12 violation of a condition of supervised release or unlawful
13 connect conduct by you. Failure to submit to a search may be
14 grounds for revocation and you shall warn any other occupants
15 that the premises may be subject to search pursuant to this
16 condition. Any search shall be conducted at a reasonable time
17 and in a reasonable matter.

18 8. You must participate in an outpatient mental
19 health treatment program approved by the probation department.
20 You must continue to take any prescribed medications unless
21 otherwise instructed by your healthcare provider. You must
22 contribute to the costs of services rendered based on your
23 ability to pay and the availability of third-party payment. I
24 authorize the release of available psychological and
25 psychiatric evaluations and reports including the presentence

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1 report to the healthcare provider.

2 9. You must not incur any new credit charges or open
3 additional lines of credit without the approval of your
4 probation officer unless you have satisfied your financial
5 obligations

6 10. You must provide the probation officer with
7 access to any requested financial information unless you have
8 satisfied your financial obligations.

9 Finally, you shall be supervised in the district of
10 your residence.

11 I'm not going to impose a fine or an assessment under
12 the JVTa because I find that you do not have the ability to pay
13 the fine and qualify as indigent for the purposes of the JVTa.
14 I will defer entry of the restitution order for the statutory
15 maximum period of 90 days pursuant to 18 U.S.C.
16 Section 3664(d)(5). I would ask that the government well
17 before that deadline confer with defense counsel and submit a
18 proposed restitution order.

19 I am imposing the mandatory special assessments of
20 \$100 per count and \$25 for Count Six of the S3 indictment for a
21 total of \$1,225, which shall be due and payable immediately. I
22 will sign the proposed forfeiture order and find that you are
23 to forfeit to the United States the specific property described
24 therein and defined therein, which I find or make at least a
25 preliminary finding that you used to facilitate the offenses

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1 set forth in the order. I will give defense counsel two weeks
2 to file any request to modify or amend that order. Before
3 doing so, you should confer with the government and if nothing
4 is filed within two weeks, that will be become the final order.

5 Does either counsel know of any legal reason why the
6 sentence should not be imposed, as stated?

7 MR. DENTON: No, your Honor.

8 MR. DE CASTRO: No, your Honor.

9 THE COURT: Sentence, as stated, is imposed. I find
10 that for the reasons I stated at length earlier, that this
11 sentence is sufficient but no greater than necessary to satisfy
12 the sentencing purposes set forth in Section 3553(a)(2)
13 including and especially the need to promote respect for the
14 law, to reflect the seriousness of Mr. Schulte's many offenses,
15 and to provide just punishment for those offenses, to afford
16 adequate deterrence not only to others but to Mr. Schulte, and
17 especially important, to protect the public from further crimes
18 of the defendant.

19 Mr. De Castro, do you have any -- I am guessing that
20 the security issues here will drive the designation and perhaps
21 the designation has even already been made since I had entered
22 an order directing the government to try and speed that along,
23 but any request with respect to location subject to those
24 parameters?

25 MR. DE CASTRO: Yes; it would be closest to his family

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1 in Texas; closest to Lubbock, Texas.

2 THE COURT: Well, I will leave it to the Bureau of
3 Prisons, consistent with at least the current conditions of
4 confinement and need for security measures to determine the
5 correct and proper facility, but to the extent it is compatible
6 with those considerations, I will recommend to the Bureau of
7 Prisons that he be designated to a facility as close to Lubbock
8 Texas as possible to facilitate the maintenance of ties to his
9 family.

10 I think there are open counts to be dismissed; is that
11 correct, Mr. Denton?

12 MR. DENTON: Yes, your Honor; they were the same
13 counts but charged in the later indictment, so the government
14 would move to dismiss the counts in the underlying original S1
15 and S2 indictments.

16 THE COURT: Well, I will grant the motion and dismiss
17 any open counts against Mr. Schulte.

18 Mr. Schulte, to the extent that -- well, actually you
19 have not given up your right to appeal, you do have the right
20 to appeal. Any notice of appeal must be filed within 14 days
21 of the entry of judgment. If you cannot afford to pay the
22 costs of an appeal, you may apply for leave to appeal in forma
23 pauperis.

24 Mr. De Castro, I assume you will be filing a notice of
25 appeal?

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1 MR. DE CASTRO: I will be, yes.

2 THE COURT: Anything further from the government?

3 MR. DENTON: No, your Honor.

4 THE COURT: Mr. De Castro?

5 MR. DE CASTRO: No, your Honor.

6 THE COURT: In that case, we are adjourned. Thank you
7 very much.

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